BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SUSAN CRAWFORD	)	
Claimant	)	
VS.	)	
	)	Docket No. 253,120
JOHNSON COUNTY & BOARD OF COMMISSIONERS	)	
Self-Insured Respondent	)	

ORDER

Claimant appeals the February 4, 2008 Award of Administrative Law Judge Kenneth J. Hursh (ALJ). Claimant was denied benefits after the ALJ determined that claimant's ruptured aneurysm did not result from exertion beyond claimant's usual work as an emergency medical responder and that claimant failed to prove that her cerebrovascular injury resulted from an external force in her working environment.

Claimant appeared by her attorney, James R. Shetlar of Overland Park, Kansas. Respondent, a self-insured, appeared by its attorney, Bart E. Eisfelder of Kansas City, Missouri.

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Award of the ALJ. The Board heard oral argument on May 6, 2008.

ISSUES

1. Did claimant's subarachnoid hemorrhage result from exertion which was more than claimant's usual work in the course of her regular employment with respondent? Claimant argues that the effort required to remove the gurney from her ambulance and to carry it across rough terrain littered with bricks spilled from an overturned semitrailer truck required greater effort than claimant would normally expend in performing her duties as a Med-Act team leader. Respondent contends claimant's duties as a paramedic regularly required claimant to cross rough terrain. The physical activities required on the date of claimant's hemorrhage were no different than

claimant would normally be exposed to while performing her job duties for respondent.

2. Was claimant's cerebrovascular injury the result of an external force in claimant's working environment? Claimant argues that the door of the ambulance struck her in the head twice as she was attempting to remove the gurney from the ambulance. That trauma, coupled with the cold weather, constituted external forces sufficient to have caused her injury. Respondent argues the medical evidence does not support claimant's contention that the cold or the blows from the door were sufficient to cause the aneurysm and the resulting cerebrovascular event.

At oral argument to the Board, the parties acknowledged that several issues were not determined by the ALJ in the Award. The parties requested, if the Board were to reverse the ALJ on the issues dealing with the compensability of this claim, that this matter be remanded to the ALJ for a determination of the undecided issues.

FINDINGS OF FACT

Claimant was a paramedic team leader for respondent and had worked for respondent as a paramedic since August 1976. On December 15, 1999, claimant and her team were responding to an emergency call involving a semi-trailer truck loaded with bricks. The truck had overturned and bricks were scattered over a large area of the highway. The ambulance was parked on a grassy area near the highway. Claimant was attempting to unload the gurney from the ambulance. As she did so, the wind kept blowing the door of the ambulance shut. Claimant said the door hit her either on her head or on the bill of her helmet on more than one occasion. Claimant was wearing heavy fire equipment, including a heavy coat and the helmet.

At some point, Sherry Sanders, the EMS battalion chief with respondent, came to the ambulance and assisted claimant with the gurney. They then transported the gurney up a grassy slope to the overturned truck. Ms. Sanders acknowledged that the bricks and the overall condition of the scene hampered their ability to transport the gurney. But Ms. Sanders also stated that working on grass, or in slippery, muddy or wet conditions on rough terrain was not unusual.

Shortly after claimant and Ms. Sanders moved the gurney to the truck, claimant stated that she did not feel well. Claimant then fell to the ground and suffered a seizure. Claimant remembered a sensation of a lightning bolt and saw a bright flash. That is all she remembers until waking up in the hospital. Claimant was transported to Overland Park Regional Medical Center, where she came under the care of board certified neurosurgeon

Robert M. Beatty, M.D. Dr. Beatty diagnosed claimant with a subarachnoid hemorrhage from a ruptured basilar tip aneurysm (bleeding at the base of the brain near the spinal column). He determined the best treatment would be coiling of the aneurysm. Claimant was referred to Dr. Graham Lee, a neuroradiologist, who successfully performed the coiling procedure. Claimant was then returned to Dr. Beatty for follow-up care.

Dr. Beatty acknowledged that claimant's aneurysm was present before the date of the accident. He testified that the actual rupture could have been caused by several things. Anything that would tend to raise a person's blood pressure could contribute to an aneurysm rupture. High blood pressure, trauma or heavy work can elevate blood pressure. He also noted a person's blood pressure could be raised while sitting at home watching television or waking up from sleep. Once an aneurysm develops, there is a risk that a rupture could occur any place. Dr. Beatty was not aware that claimant had hypertension and was a smoker. In June 2000, Dr. Beatty released claimant to return to work with no strenuous activity and no lifting over 20 pounds. Dr. Beatty last examined claimant in November 2002. Dr. Beatty noted that he had not been updated on claimant since 2002. He agreed he would defer to Kathryn Ann Hedges, M.D., and Dr. Lee regarding any appropriate restrictions for claimant.

Claimant was referred by respondent to Dr. Hedges, a board certified psychiatrist and neurologist, on September 18, 2006. Dr. Hedges is a clinical neurologist who not only performs tests, but also sees patients. Dr. Hedges diagnosed claimant with a basilar tip aneurysm, which she described as a ballooning of a blood vessel on the basilar artery at the base of the brain stem. A rupture of the aneurysm allows blood to spread over the brain stem area. Typically, a rupture of the basilar tip aneurysm, which is probably a congenital weakening of the wall of a blood vessel, is caused by high blood pressure, by smoking and by diabetes or high cholesterol. Claimant had high blood pressure, a history of diabetes and was a pack-a-day smoker. At the time of her examination by Dr. Hedges, claimant's blood pressure was 158/120, which Dr. Hedges described as severely abnormal and extremely high. When the situation surrounding claimant's ruptured aneurysm was explained to Dr. Hedges, she opined that the situation did not cause the aneurysm rupture. Dr. Hedges testified the more likely causes of the aneurysm rupture were claimant's hypertension and smoking. Dr. Hedges determined that claimant had no restrictions from the aneurysm rupture. She did note that with claimant's high blood pressure, she would not clear claimant to be a paramedic or an EMT.

Dr. Hedges was asked about the door of the ambulance hitting claimant and any connection that may have with the aneurysm rupture. She testified that if the rupture was the result of trauma, there would be associated localized findings, usually a bruise over the area where the blow occurred. Then they would have a subarachnoid hemorrhage underneath that area. She did not remember any indication of bruising in claimant's records. She went on to testify that, in claimant's case, while a subarachnoid bleed could be due to trauma, the rupture of the basilar tip aneurysm would not be caused by trauma such as a blow to the head.

Claimant was referred by her attorney to board eligible internal medicine specialist Daniel D. Zimmerman, M.D., for an examination on June 16, 2005. Dr. Zimmerman diagnosed claimant with a basilar artery aneurysm rupture, consistent with other medical reports in this record. Dr. Zimmerman adopted the 9 percent whole body impairment rating of Terrence Pratt, M.D., noting that both he and Dr. Pratt based the rating on the fourth edition of the AMA *Guides*.[1] Dr. Zimmerman noted in his report of June 16, 2005, and in his testimony that claimant suffered the aneurysm rupture after being struck on the lip of her helmet by an ambulance door. But Dr. Zimmerman failed to state, either in the report or in his testimony, within a reasonable degree of medical certainty, that claimant's aneurysm rupture occurred as a result of that trauma. He merely indicated that it occurred after the trauma.

Dan Crawl, a firefighter for the Olathe Fire Department, testified that the accident scene on the date of claimant's aneurysm rupture was unusual in that a truckload of bricks had overturned and created what he described as a "moonscape".[2] He went on to testify that working in the cold, snow, ice, rain, sleet and windy conditions is normal in their occupation. He has also worked on inclines, uneven terrain, with potholes and around debris. He has had to move a gurney across uneven terrain, up and down embankments or on hills.

Lisa Waisner, a certified ergonomic evaluation specialist, prepared a job analysis of a paramedic at the request of respondent. It is noted that the analysis was done in 1998 but her certification was not completed until 2005. However, Ms. Waisner had been doing such evaluations for 21 years prior to being certified. In the job analysis, it was noted that paramedics are required to carry items up to 100 pounds. This does not include the weight of a patient being transported. The work is considered very heavy physically, and the scenes of the accidents vary as does the terrain. The work is done in all kinds of weather conditions.

Gary Ludwig, the deputy fire chief of the Memphis Tennessee Fire Department, testified on behalf of respondent. Mr. Ludwig has been involved in emergency medical services for 30 years as an EMT, as a paramedic and with EMS and paramedic education and training. He acknowledged it is not unusual for a paramedic to get the gurney out of the ambulance by himself or herself. The work in question is very physical. Lifting requirements exceed 125 pounds. EMTs and paramedics are required to work in all kinds of weather conditions and over all types of terrain. He was provided the testimony of claimant, Dan Crawl and Sherry Sanders. After reviewing their testimony, he stated there was nothing out of the ordinary associated with the situation on the date of claimant's aneurysm rupture. Those conditions were to be expected and anticipated on every call.

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[1] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

[2] Crawl Depo. at 5.

Respondent also provided the testimony of David V. Morando, the assistant chief with the Johnson County Med-Act. Mr. Morando has been employed with Johnson County since 1977. He has known claimant since he began working for respondent, as she was working for respondent before him. His knowledge of claimant's job duties comes partially from hands-on experience and partially from his duties as a supervisor. Based on his knowledge of claimant's duties, as well as reviewing claimant's testimony, he determined that claimant's exertion on December 15, 1999, was not extraordinary. He testified that he "didn't see any extraordinary effort being exercised or demonstrated".[3]

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.[4]

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[5]

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.[6]

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

> . . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental

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[3] Morando Depo. at 23.

[4] K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

[5] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

[6] K.S.A. 1999 Supp. 44-501(a).

> injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."[7]

K.S.A. 1999 Supp. 44-501(e) states:

> Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more that the employee's usual work in the course of the employee's regular employment.[8]

The Kansas Supreme Court, in *Makalous*,[9] addressed the language contained in K.S.A. 44-501 dealing with the "usual vs. unusual" dispute contained in the so-called "heart amendment" to K.S.A. 44-501, stating:

> What is usual exertion, usual work, and regular employment as those terms are used in the 1967 amendment to K.S.A. (Now 1972 Supp.) 44-501 will generally depend on a number of surrounding facts and circumstances, among which the daily activities of the workman may be one, but only one, among many factors.
>
> Whether the exertion of the work necessary to precipitate a disability was more than the workman's usual work in the course of his regular employment presents a question of fact to be determined by the trial court.[10]

In this instance, the ALJ found, and the Board agrees, that claimant's basilar tip aneurysm rupture was not caused by unusual exertion within the meaning of K.S.A. 1999 Supp. 44-501(e). While claimant contends her labors on December 15, 1999, were substantially increased due to the accident scene, the testimony of Sherry Sanders, Dan Crawl, Gary Ludwig and David Morando, along with the job analysis of Lisa Waisner, convince the Board that the labors described by claimant were the same labors which claimant would regularly perform in her job. The Board finds that the exertion required in claimant's job was no more than claimant's usual work in the course of her employment for respondent.

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[7] *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

[8] K.S.A. 1999 Supp. 44-501(e).

[9] *Makalous v. Kansas State Highway Commission*, 222 Kan. 477, 565 P.2d 254 (1977).

[10] *Id.*, at 481, citing *Nichols v. State Highway Commission*, Syl. ¶ 3 and 4, 211 Kan. 919, 508 P.2d 856 (1973).

The Supreme Court, in *Makalous*, went on to note that where a claimant's disability is the product of some external force or agency, and not of the exertion of the claimant's work, the heart amendment has no applicability.

> Where exertion is not the agency which produces the workman's disability, the usual vs. unusual exertion test of the heart amendment is irrelevant.[11]

In *Dial*, the Supreme Court found that an external force other than exertion, when being the factor which precipitates a cerebrovascular accident, could result in the disability being compensable as a result of an "external force".

In *Dial*, the medical testimony verified that it was the heat that the claimant was subjected to which led to the disability. There was no mention in the medical evidence of exertion as a causative factor. The Court, in *Dial*, found that the evidence indicated the progressive enclosure of the mezzanine on which the claimant worked caused "progressively greater heat."[12] The Court found that the cardiovascular injury in *Dial* did not bring the heart amendment into play because the agency which "precipitated" the disability was not the exertion of his work, but rather the external force, in that instance the extreme heat. The *Dial* court stated:

> Where the disability is the product of some external force or agency, and not the exertion of the claimant's work, the heart amendment has no applicability. In such a case, where exertion is not the agency "necessary to precipitate the disability," the usual vs. unusual exertion test applied in our previous heart amendment cases is irrelevant. Instead, the customary standards are to be applied in determining whether the injury was accidental, and whether it arose out of and in the course of a workman's employment.[13]

The Court in *Makalous*, after analyzing *Dial*, found that heat and cold in working environments are recognized as external forces which can cause injury. In *Makalous*, it was the extreme cold which the claimant was subjected to which precipitated his heart attack.

More recently, the Kansas Supreme Court, in *Mudd,*[14] was asked to consider whether the stress of a registered nurse responding to a "code blue" was sufficient to qualify as an external force sufficient to take that claimant's resulting stroke out of the

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[11] *Id.*, at Syl. ¶ 4; *Dial v. C. V. Dome Co.*, 213 Kan. 262, 515 P.2d 1046 (1973).

[12] *Dial*, at 267.

[13] *Id.*, at 268.

[14] *Mudd v. Neosho Memorial Regional Med. Center*, 275 Kan. 187, 62 P.3d 236 (2003).

"heart amendment". The Court noted the language in *Dial* and stated where "the disability is the product of some external force or agency, and *not of the exertion of the claimant's work,* the heart amendment has no applicability."[15] The Court went on to hold that only "oppressive heat" and "freezing cold and windy weather" qualify as external forces, i.e., external to the claimant's work exertion. The Court held that stress cannot, as a matter of law, be an external factor "under these facts".[16] The *Mudd* Court also held that the heart amendment is constitutional, as it "satisfies the legitimate state interest of compensating only those employees who suffer heart attacks as a result of factors related to their work."[17]

Here, there is no allegation of extreme cold or heat. While claimant notes the cold weather, there is no indication in this record that the cold was extreme. The claimant, in this instance, alleges the physical contact of the ambulance door striking her in the helmet was the precipitating factor leading to the aneurysm rupture. However, the lack of any indication of trauma, such as bruising or other external signs of hemorrhage or injury, defeats claimant's contention. Dr. Hedges stated that the rupture of the basilar tip aneurysm would not likely occur from trauma. She felt that a more likely culprit would be claimant's preexisting high blood pressure or the fact that she smoked a pack of cigarettes per day.

Dr. Beatty also stated that claimant's high blood pressure was the more likely cause of the rupture. They both acknowledged that claimant's aneurysm was present before the date of alleged accident. Neither believed the door hitting claimant's helmet would be the cause of the rupture.

Even Dr. Zimmerman, claimant's hired expert, failed to testify that the door striking the helmet was the cause of the rupture. He merely stated that the rupture occurred after the door hit claimant's helmet.

The Board finds that claimant has failed to prove that the door of the ambulance striking claimant's helmet constitutes an external force which would lead to claimant's aneurysm rupture. Therefore, the Board finds that the Award by the ALJ denying claimant an award in this instance should be affirmed.

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[15] *Id.*, at 195, citing Dial, 213 Kan. at 263.

[16] *Id.*, at 196.

[17] *Id.*, at 201, citing *Cossé v. Orleans Material and Equipment*, 626 So. 2d 440, 442 (La. App. 1993).

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Kenneth J. Hursh dated February 4, 2008, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June, 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James R. Shetlar, Attorney for Claimant
Bart E. Eisfelder, Attorney for Respondent
Kenneth J. Hursh, Administrative Law Judge